

Amendment No. 3 to SB0349

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AMEND Senate Bill No. 349*

House Bill No. 1781

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. [Effective 07/01/02, except as otherwise provided by §5]

(1)

(a) Notwithstanding any provision of Title 67, Chapter 6, to the contrary, during the months of July, 2002, and August, 2002, the state tax rate set forth in the following sections, and in all sections imposing such rate by cross-reference to such sections, shall temporarily be raised from the current rate of six percent (6%) to the rate of seven percent (7%):

- (1) §67-6-103(f);
- (2) §67-6-202(a);
- (3) §67-6-203(a);
- (4) §§67-6-204(a) and (c); and
- (5) §67-6-205(a).

(b) Notwithstanding the provisions of §67-6-103(a)(3) or any other law to the contrary, all increased revenues attributable to the rate increase set forth in subsection (a) shall be paid into the state's general fund and shall be allocated exclusively for general state purposes.

(2) Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) The rate shall be two and fifteen one-hundredths cents (2.15¢) on each cigarette.

(3)

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(a) Tennessee Code Annotated, Section 67-6-103(d), is amended by adding the following language as a new, appropriately designated subdivision:

(3) Collection and distribution of state and local sales and use tax revenues pursuant to this subsection are subject to the provisions of §67-6-228(a).

(b) Tennessee Code Annotated, Section 7-88-106, is amended by adding the following language as a new, appropriately designated subsection:

(c) Collection and distribution of state and local sales and use tax revenues pursuant to this section are subject to the provisions of §67-6-228 (b).

(4) Tennessee Code Annotated, Section 67-6-206(b)(1), is amended by deleting the words, figures and symbols "one and one-half percent (1.5%)" and by substituting instead the following:

three percent (3%)

(5) Tennessee Code Annotated, Section 67-6-218, is amended by deleting from subsections (a) and (b) the words, figures and symbols "one and one-half percent (1.5%)" and by substituting instead the following:

three percent (3%)

(6) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as a new, appropriately designated section:

§67-6-228.

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(1) Notwithstanding any provision of this act or any other law to the contrary, the existence and rate of any tax imposed under Title 67, Chapter 6, Part 2, as of June 30, 2002, shall remain undiminished by the provisions of this act to the extent that such taxes are to be distributed pursuant to §67-6-103(d) under a financing arrangement in effect as of June 30, 2002; **provided, however, if** the rate of any such tax is increased on or after July 1, 2002, **then** those revenue collections that are attributable to such rate increase shall be paid into the state's general fund.

(2) Notwithstanding any provision of this act or any other law to the contrary, the existence and rate of any tax imposed under Title 67, Chapter 6, Part 7, as of June 30, 2002, shall remain undiminished by the provisions of this act to the extent that such taxes are to be distributed pursuant to §67-6-103(d) under a financing arrangement in effect as of June 30, 2002; **provided, however, if** the rate of any such tax is increased on or after July 1, 2002, **then** those revenue collections that are attributable to such rate increase shall be paid into the general fund of the municipality or the county, as appropriate.

(b)

(1) Notwithstanding any provision of this act or any other law to the contrary, the existence and rate of any tax imposed

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under Title 67, Chapter 6, Part 2, as of June 30, 2002, shall remain undiminished by the provisions of this act to the extent that such taxes are to be distributed pursuant to §7-88-106 under a financing arrangement in effect as of June 30, 2002; **provided, however, if** the rate of any such tax is increased on or after July 1, 2002, **then** those revenue collections that are attributable to such rate increase shall be paid into the state's general fund.

(2) Notwithstanding any provision of this act or any other law to the contrary, the existence and rate of any tax imposed under Title 67, Chapter 6, Part 7, as of June 30, 2002, shall remain undiminished by the provisions of this act to the extent that such taxes are to be distributed pursuant to §7-88-106 under a financing arrangement in effect as of June 30, 2002; **provided, however, if** the rate of any such tax is increased on or after July 1, 2002, **then** those revenue collections that are attributable to such rate increase shall be paid into the general fund of the municipality or county, as appropriate.

SECTION 2. [Effective 09/01/02, except as otherwise provided by §5]

(1) This section shall be known, and may be cited as, the "Tennessee Temporary Funding Plan."

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(2) Tennessee Code Annotated, Section 55-4-113(a)(6)(A), is amended by deleting the words, figures and symbols "fifty dollars (\$50.00)." and by substituting instead the following:

seventy-five dollars (\$75.00).

(3)

(a) Tennessee Code Annotated, Section 55-6-107(a), is amended by deleting the words, figures and symbols "ninety-eight percent (98%) thereof to the highway fund" and by substituting instead the following:

seventy-one percent (71%) thereof to the highway fund

(b) Tennessee Code Annotated, Section 55-6-107(a), is further amended by deleting the words, figures and symbols "two percent (2%) thereof to the general fund." and by substituting instead the following:

twenty-nine percent (29%) thereof to the general fund.

(4)

(a) Tennessee Code Annotated, Section 57-3-302(a), is amended by deleting the language "one dollar and ten cents (\$1.10)" and by substituting instead the language "one dollar and fifty-four cents (\$1.54)".

(b) Tennessee Code Annotated, Section 57-3-302(b) is amended by deleting the language "four dollars (\$4.00)" and by substituting instead the language "five dollars and sixty cents (\$5.60)".

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(c) Tennessee Code Annotated, Section 57-5-201(a), is amended by deleting the language "three dollars and ninety cents (\$3.90)" and by substituting instead the language "five dollars and forty-six cents (\$5.46)".

(d) Tennessee Code Annotated, Section 57-6-104(c)(5), is amended by inserting the language "or the state privilege tax levied in Tennessee Code Annotated, Section 57-5-201" immediately following the words "excise tax" in the first sentence.

(5)

(a) Tennessee Code Annotated, Section 67-3-1301(a), is amended by deleting the words, figures and symbols "twenty cents (20¢) per gallon" and by substituting instead the following:

twenty-one cents (21¢) per gallon

(b) Tennessee Code Annotated, Section 67-3-1302(a), is amended by deleting the words, figures and symbols "seventeen cents (17¢) per gallon" and by substituting instead the following:

eighteen cents (18¢) per gallon

(6) Tennessee Code Annotated, Section 67-4-506, is amended by deleting the section in its entirety.

(7) Tennessee Code Annotated, Section 67-4-2007(a), is amended by deleting the words, figures and symbols "six percent (6%) of the net earnings" and by substituting instead the following:

six and one-half percent (6.50%) of the net earnings

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(8)

(a) Tennessee Code Annotated, Section 67-6-102(24)(F)(viii), is amended by deleting the following words, figures and symbols:

This subdivision (24)(F)(viii) does not apply to the renting or providing of space to a craft fair, antique mall, or book fair or gun show, if such gun show or book fair is sponsored by a not-for-profit corporation. This subdivision (24)(F)(viii) also does not apply to the renting or providing of space at a flea market or the renting or providing of space at conventions, trade shows, or expositions, if such conventions, trade shows, or expositions do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales

(b) Tennessee Code Annotated, Section 67-6-102(29), is amended by deleting the following words, figures and symbols:

"Tangible personal property" does not include utility poles, anchors, guys, and conduits, and such facilities shall be deemed to be real property for the purposes of this chapter

(c) Tennessee Code Annotated, Section 67-6-102(30)(D), is amended by deleting the words and symbol "public pay telephone services,".

(9)

(a) Tennessee Code Annotated, Sections 67-6-103(a)(3)(A), (B) and (E), are amended by deleting the words, figures and symbols "four and fifty-nine

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hundred twenty-five ten-thousands percent (4.5925%)" and by substituting
instead the following:

three and seventy-four hundred thirty-seven ten-thousandths percent
(3.7437%)

(b) Tennessee Code Annotated, Section 67-6-103, is amended by
deleting subsection (f).

(10) Tennessee Code Annotated, Section 67-6-202(a), is amended to substitute
the following tax rate:

eight and three-fourths percent (8.75%)

(11) Tennessee Code Annotated, Section 67-6-203(a), is amended to substitute
the following tax rate:

eight and three-fourths percent (8.75%)

(12)

(a) Tennessee Code Annotated, Sections 67-6-204(a) and (c), are
amended to substitute the following tax rate:

eight and three-fourths percent (8.75%)

(b) Tennessee Code Annotated, Section 67-6-204(b), is amended by
deleting the subsection in its entirety.

(13)

(a) Tennessee Code Annotated, Section 67-6-205(a), is amended to
substitute the following tax rate:

eight and three-fourths percent (8.75%)

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(b) Tennessee Code Annotated, Section 67-6-205, is amended by adding the following language as a new, appropriately designated subsection:

(c) In addition to those services subject to taxation pursuant to subsection (a) on August 31, 2002, tax at the rate set forth in subsection (a) shall also be levied on the following services, regardless of the location of the service provider's place of business, whenever a charge is imposed for performance of the following services within the boundaries of this state:

(1) Disinfecting and pest control services to dwellings and other buildings;

(2) Cleaning and maintenance services to dwellings and other buildings;

(3) Detective, security and armored services (including, but not necessarily limited to, detective agencies, fingerprint services, private investigators and security guards and personnel);

(4) Security systems services (including, but not necessarily limited to, installation, monitoring and maintenance of security systems devices, such as burglar and fire alarms and electronic surveillance cameras and equipment);

(5) Landscape and horticultural services (including, but not necessarily limited to, landscape design, counseling and planning;

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lawn and garden services; and ornamental plant, shrub and tree
planting, grooming and maintenance services);

(6) Barbering services, as defined in §62-3-105, and
cosmetology services, as defined in §62-4-102(a)(3); and

(7) Operator or crew services rendered with regard to any
leased or rented personal property subject to taxation under §67-
6-204.

(14) Tennessee Code Annotated, Section 67-6-212, is amended by deleting the
section in its entirety and by substituting instead the following:

§67-6-212.

(a) There is levied a tax at a rate of eight and three-fourths
percent (8.75%) of the gross receipts or gross proceeds of each sale at
retail of the following:

(1) Dues or fees to any membership sports, leisure or
recreation club, including free or complimentary dues or fees,
when such are made in connection with a valuable contribution to
any such establishment or organization, which shall have the
value equivalent to the charge that would otherwise have been
made, including any fees paid for the use of facilities or services
rendered at a health spa or club or any similar facility or business;

(2) Sales of tickets, fees or other charges made for
admission to or voluntary contributions made to any place of

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amusement, sports, entertainment, leisure, exhibition, display or any other recreational event or activity, including free or complimentary admissions when made in connection with a valuable contribution to any organization or establishment holding or sponsoring such activities which shall have the value equivalent to the charge that would have otherwise been made;

(3) Charges made for the privilege of entering or engaging in any kind of recreational or leisure activity, when no admission is charged spectators, such as tennis, racquetball or handball courts;

(4) Charges made for the privilege of using tangible personal property for any amusement, sports, entertainment, leisure or recreational activity such as trampolines, golf carts, bowling shoes, skates or other sports and athletic equipment.

(5) Charges made for the privilege of occupancy in any hotel, motel, inn, tourist camp, tourist court, tourist cabin or any other place in which rooms, lodging or other accommodations are regularly furnished to transients for a consideration;

(6) Sales of any prepared food. As used in this item, "prepared food" means:

(A) Food that is sold in a heated state or is heated by the seller;

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(B) Two (2) or more food ingredients that are mixed or combined by the seller for sale as a single item; or

(C) Food that is sold with eating utensils provided by the seller, (including plates, knives, forks, spoons, glasses, cups, napkins, or straws). "Prepared food" does not include food that is only sliced, repackaged or pasteurized by the seller or soft drinks sold in cans or bottles;

(7) Charges and fees made for short-term rentals of any automobile, passenger van or pickup truck. As used in this item, "short term" means any period of ninety (90) consecutive, calendar days or less;

(8) Charges made for the privilege of using any machine or device intended to provide the user any form of amusement, entertainment, music or game; and

(9) Charges made for the privilege of using any vending machine or device by which merchandise is sold or delivered to the user.

(b) Free or complimentary dues or fees which shall have the value equivalent to the charge that would have otherwise been made shall be taxed under the provisions of this section, unless such free or

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complimentary dues or fees are provided to persons who attend a public school or public college or university.

(c) The provisions of this section shall not be construed to levy a tax on any sale or transfer of any interest in real property, regardless of whether or not such property is used for amusement or recreational purposes.

(d) The provisions of this section taxing charges for admission shall be construed to include all charges whatsoever made for admission to professional sporting events, including any charge for a seat license, skybox, luxury suite, or any other accommodation for spectators, whether styled as a license, lease, rental or otherwise.

(15) Tennessee Code Annotated, Section 67-6-217, is amended by deleting the words, figures and symbols "four and one-half percent (4.5%)" and by substituting instead the following:

eight and three-fourths percent (8.75%)

(16) Tennessee Code Annotated, Section 67-6-221(a), is amended by deleting the words, figure and symbols "seven and one-half percent (7.5%)" and by substituting instead the following:

eight and three-fourths percent (8.75%)

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(a) Tennessee Code Annotated, Section 67-6-226, is amended by deleting the words, figures and symbols "eight and one-quarter percent (8.25%)" and by substituting instead the following:

eight and three-fourths percent (8.75%)

(b) Tennessee Code Annotated, Section 67-6-226, is further amended by deleting the following language:

, except such state tax shall not apply to television programming or television service charges or fees in an amount less than fifteen dollars (\$15.00) provided by a cable television service provider authorized pursuant to Title 7, Chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption

(c) Tennessee Code Annotated, Section 67-6-227, is amended by deleting the words, figures and symbols "eight and one-quarter percent (8.25%)" and by substituting instead the following:

eight and three-fourths percent (8.75%)

(18) Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following language as new, appropriately designated sections:

§67-6-229.

(a) The retail sale of beer, wine and all other alcoholic beverages shall be taxed at the rate of eight and three-fourths percent (8.75%), regardless of whether sold for consumption on or off premises of the vendor.

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(b) The retail sale of all tobacco products shall be taxed at the rate of eight and three-fourths percent (8.75%).

(c) For purposes of this section:

(1) "Beer, wine and all other alcoholic beverages" means and includes any beverage, however designated, that:

(A) Is suitable for human consumption;

(B) Contains one-half (1/2) of one (1) per cent or more of alcohol by volume; and

(C) Is regulated pursuant to the provisions of Title 57, Chapter 3, 4 or 5; and

(2) "Tobacco products" means and includes all cigarettes, cigars, cheroots, stogies, beedies, bidis, manufactured tobacco and snuff of all descriptions and designations, whether made of tobacco or any substitute therefor.

§67-6-230.

(a)

(1) Notwithstanding any provision of this chapter to the contrary, except as otherwise provided in subdivision (2), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of five percent (5%).

(2) The retail sale of the following food and food ingredients shall be taxed at the rate levied by §67-6-212:

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(A) Candy;

(B) Dietary supplements; and

(C) Prepared food.

(3) For purposes of this section:

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

(B) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(a) A vitamin;

(b) A mineral;

(c) An herb or other botanical;

(d) An amino acid;

(e) A dietary substance for use by humans

to supplement the diet by increasing the total dietary intake; or

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(f) A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. §101.36.

(C) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

"Prepared food" does not include:

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(a) Food that is only sliced, repackaged, or
pasteurized by the seller; or

(b) Soft drinks sold in cans or bottles.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(c) As used in this section, "food and food ingredients" does not include:

(1) Beer, wine and all other alcoholic beverage, as defined in §67-6-229(c)(1); or

(2) Tobacco products, as defined in §67-6-229(c)(2).

§67-6-231. Notwithstanding any provision of this chapter or any other law to the contrary, the portion of the eight and three-fourths percent (8.75%) general state sales and use tax rate in excess of the six percent (6%) general state rate in effect on August 31, 2002, shall apply only to the first nine thousand one hundred dollars (\$9,100) on the sale or use of any single article of personal property.

(19) Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting §§67-6-309 and 67-6-311.

(20) Tennessee Code Annotated, Section 67-6-329(a), is amended by deleting subdivision (17).

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(21) Tennessee Code Annotated, Section 67-6-330(a), is amended by deleting subdivisions (3), (10), (14) and (19).

(22) Tennessee Code Annotated, Section 67-6-333, is amended by deleting the section in its entirety.

(23) Tennessee Code Annotated, Section 67-6-349, is amended by deleting the section in its entirety.

(24) Tennessee Code Annotated, Section 67-6-351, is amended by deleting the section in its entirety.

(25)

(a) Except as otherwise provided by the provisions of §§67-6-228(a)(2) or (b)(2), Tennessee Code Annotated, Title 67, Chapter 6, is amended by deleting §§67-6-701 through 67-6-710, 67-6-713 and 67-6-714 for transactions occurring on or after September 1, 2002.

(b) Tennessee Code Annotated, Section 67-6-712(a), is amended by deleting the words and punctuation "The tax levied by a county under this part shall be distributed as follows:" and by substituting instead the following:

Estimates, distributions and expenditures of proceeds pursuant to §67-6-715(b) shall be subject to the following requirements:

(c) Tennessee Code Annotated, Title 67, Chapter 6, Part 7, is amended by adding the following language as a new, appropriately designated section:

§ 67-6-715.

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(a) Notwithstanding any provision of law to the contrary, in accordance with estimates developed by the department of revenue pursuant to subsection (b), a sum shall be earmarked and allocated from the general fund each fiscal year in order to substantially reimburse counties and municipalities for loss of revenue resulting from amendments to Title 67, Chapter 6, Part 7, provided in Section 2(25)(a) of this act.

(b) For fiscal year 2002-2003 and for any subsequent fiscal year during which Section 2(25)(a) is effective, the department of revenue shall estimate for each county and municipality the loss of local option sales tax revenue resulting from amendments to Title 67, Chapter 6, Part 7, provided in Section 2(25)(a) of this act. In calculating such estimate, the department shall utilize the local option sales tax rate in effect in such county or municipality on May 15, 2002; as well as the single article cap imposed by §67-6-702(a)(1) on May 15, 2002; as well as the local tax rate allocation in effect in such county or municipality on August 31, 2002, pursuant to the provisions of Sections 9 and 10 of Chapter No. 719 of the Public Acts of 2002; as well as the provisions of §§6-51-115, 67-6-228(a)(2) and 67-6-228(b)(2). The department shall also utilize any other data or information that the department deems relevant. In accordance with such estimate and subject to

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the provisions of subsection (c) and §67-6-712, each county and municipality shall receive an amount that is approximately equal to the amount of local option sales tax that the county or municipality would have received during the fiscal year, in the absence of Section 2(25)(a) of this act. It is the legislative intent that distributions made pursuant to this subsection shall be subject to the distribution and expenditure requirements of §67-6-712.

(c) From the sum earmarked, allocated and distributed each fiscal year to counties and municipalities pursuant to this section, one and one hundred twenty-five thousandths percent (1.125%) shall be retained by the department of revenue to cover the state's expenses in implementing and administering the provisions of this section and in distributing such funds to counties and municipalities.

SECTION 3.

(a) In accordance with the provisions of Title 4, Chapter 5, the department of revenue is authorized to promulgate such rules, including emergency and public necessity rules, as may be necessary to ensure and promote the efficient, effective and timely implementation of this act and collection of taxes levied in Sections 1 and 2 of this act.

(b) Notwithstanding any provision of this act to the contrary, in accordance with the provisions of Title 4, Chapter 5, the department of revenue is authorized by rule to

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temporarily adjust and correct the local-share rate, otherwise established by Section 2(9)(a) of this act, as may be necessary to ensure that such local-share percentage rate collectively produces, for fiscal year 2002-2003, local-share revenues approximately equal to such local-share revenues produced during fiscal year 2001-2002.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, **then** such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5.

(a)

(1) For purposes of rule promulgation, including emergency and public necessity rules, this act shall take effect on becoming law, the public welfare requiring it; and

(2) For purposes of administrative preparation and implementation activities necessary and preliminary to the efficient, effective and timely collection of taxes levied by Sections 1 and 2, this act shall take effect on becoming law, the public welfare requiring it.

(b) Sections 3 and 4 of this act shall take effect on becoming law, the public welfare requiring it.

(c) For all other purposes,

(1) Section 1 of this act shall take effect on July 1, 2002, the public welfare requiring it; and

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(2) Section 2 of this act shall take effect on September 1, 2002, the public welfare requiring it, and shall remain in effect through December 31, 2005, at which time:

(A) Section 2 is repealed; and

(B) The language of Title 55, Chapter 4, Part 1; Title 55, Chapter 6, Part 1; Title 57, Chapter 3, Part 3; Title 57, Chapter 5, Part 2; Title 67, Chapter 3; Title 67, Chapter 4; and Title 67, Chapter 6; (to the extent such language is altered by the provisions of Section 2), is revived and restored to its status as of August 31, 2002.

(d) The Tennessee Code Commission is hereby authorized to make such changes to the text of Tennessee Code Annotated as shall be necessary to implement the purpose and intent of Section 5(c) of this act.